



The Secretary of Energy
Washington, DC 20585

April 21, 2008

MEMORANDUM FOR STEPHEN J. HADLEY
ASSISTANT TO THE PRESIDENT FOR NATIONAL
SECURITY AFFAIRS

FROM:

SAMUEL W. BODMAN

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SUBJECT:

Department of Energy's Views on the Recommendations
from the Public Interest Declassification Board

In response to the President's January 29, 2008, memorandum, I submit the Department of Energy's (DOE) views on the recommendations made by the Public Interest Declassification Board (Board) in its December 2007 report entitled *Improving Declassification*. Those views are set forth in the attachment to this memorandum.

The Board's report provides a thorough assessment of current declassification policy and offers many sound recommendations for meeting the challenges of declassification in the future. DOE is committed to meeting the challenges of declassification, chiefly of striking the right balance between providing the public with as much information as possible while protecting information in the interest of national security.

DOE's point of contact with respect to this matter is Glenn S. Podonsky, Chief Health, Safety and Security Officer, who may be contacted at (202) 586-9275 or glenn.podonsky@hq.doe.gov.

Attachment



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DEPARTMENT OF ENERGY



**COMMENTS
ON
THE PUBLIC INTEREST
DECLASSIFICATION BOARD'S REPORT
"IMPROVING DECLASSIFICATION"**

Prepared by:
Office of Classification
Office of Health, Safety and Security

March 2008

Issue No. 1 – Understanding What the Declassification System is Accomplishing.

RECOMMENDATIONS

1. The Board recommends establishing by Executive Order or by statute a National Declassification Program under the Archivist of the United States.
2. A new National Declassification Center (NDC) to be established within the National Archives and Records Administration (NARA) should administer the program, and the Archivist should establish a new position— Deputy Archivist for Declassification Policy and Programs —to oversee all aspects of the NDC's operations.
3. Departments and agencies should be required to consolidate all of their declassification activities in one office or bring them under the control of one office.
4. All departments and agencies should be required to record declassification decisions on a single computerized system, regardless of the avenue by which declassification occurs and within five years to make these databases available to the public containing at least pertinent information such as the titles of the documents and the locations where they are available.
5. All departments and agencies should report to the NDC at least annually what they have declassified.

The Department of Energy's (DOE) View on Recommendations:

DOE concurs with recommendations 1, 2, 4, and 5 under Issue No. 1. The establishment of a National Declassification Program under the Archivist would provide needed direction for consolidating and prioritizing declassification actions from various sources (e.g., Freedom of Information Act (FOIA), Mandatory Declassification Review (MDR), automatic declassification, etc.). In addition, the establishment of a centralized database would provide a tremendous service to the public by eliminating the requirement to search multiple agency databases to find all relevant declassified documents in a topic of interest. It also would eliminate inefficiency inherent with each agency developing and maintaining independent databases. Also, this centralized database could aid agencies in meeting the requirements of the Order.

DOE does not concur with recommendation 3 under Issue No. 1. While DOE has consolidated many of its declassification assets and their direction under one office, there is a need for such assets to remain deployed at other locations. First of all, many organizations throughout an agency will still require individuals to review newly generated documents for classification locally. These individuals possess knowledge unique to their sites or activities and would be valuable assets to the overall agency's declassification efforts. It would be inefficient to use them only for classification purposes or to dictate their work load from a central location/organization. Secondly, many of the documents located at DOE sites do not include other-agency equities. Consequently, requiring the documents to be sent to the National Declassification Center (NDC) would have no benefit and could result in them being reviewed by individuals who are less familiar with the subject areas covered in the documents. Finally, the local declassification assets may provide better service to the public by responding to high priority requests from environmental groups, local governments, and concerned citizens rather than those established by a central body such as the one identified in recommendation 2 of Issue No. 2.

Considerations for Implementation:

In implementing recommendation 4, an electronic version of the entire document should be made available to the public rather than just the information required to request the document. Not only would it be a greater service to the public, but it would preclude agencies from maintaining multiple assets to retrieve requested documents and ensure that the contact information is current.

Recommendation 3 could be modified to require agencies to have a central office to establish agency policies consistent with those of the NDC and to interface with local declassification assets in order to facilitate reviews of documents with multiple agency equities, utilize the specific expertise available at other locations, and help establish priorities for the limited local assets.

Issue No. 2 – Prioritizing the Declassification Review of Historically Significant Information.

RECOMMENDATIONS

1. To ensure that historically significant classified records are given priority at the 25-year review point, both in terms of what records are taken first and in terms of the quality of the review they receive, the President should promulgate by Executive order, or other appropriate issuance, a system for identifying such information.
2. A board consisting of prominent historians, academicians, and former Government officials would be appointed by the Archivist to determine which events or activities of the U.S. Government should be considered historically significant from a national security and foreign policy standpoint, for a particular year. The board would require input of agency records managers and historians as well as NARA's archivists, to include those within the Presidential libraries, to determine the specific records series that most likely contain the records about the topics the board identifies as historically significant.
3. Once the records series determined to be "likely to contain information of historical significance" had been identified and approved, these records would receive the highest priority for declassification.
4. The Archivist of the United States, through the NDC, would oversee the implementation of this process within affected departments and agencies, and would establish within the NDC, a mechanism for resolving disagreements that might arise in the course of such implementation.
5. If this system were adopted, E.O. 12958, as amended, would need to be amended to allow departments and agencies to give priority to the review of classified records deemed to be historically significant as they reach 25 years of age.
6. It is recognized that "routine" records may still have significance, especially to particular individuals. Such records would still be subject to timely review for declassification in response to a specific access demand (e.g. a FOIA or MDR request).

DOE's View on Recommendations:

DOE concurs in principle with recommendations 1 through 6 under Issue No. 2 since there is a compelling need to ensure that the Government's limited declassification assets are focused on those documents that are most valuable to the public. However, as mentioned in the discussion of Issue No.1, there must be a mechanism to consider issues of local interest or concern (e.g., environmental and health issues, litigation, etc.).

Considerations for Implementation:

Recommendation 4's requirement for the Archivist to establish a mechanism for resolving conflict between agencies should be limited to those conflicts involving priorities for document reviews. Other issues, such as classification decisions, should be addressed through normal agency channels. In implementing recommendation 6, a mechanism for prioritizing "routine" records that are of significant interest to an individual or public interest group should be established through the individual agency or the NDC.

Issue No. 3 – Expediting the Declassification of Presidential Records.

RECOMMENDATIONS

1. The Archivist should establish a single center within the Washington, D.C. metropolitan area, to house all future classified Presidential records from the end of a Presidential administration until their eventual declassification, at which time, they would be physically transferred to the appropriate Presidential library and made available to the public.
2. If establishing a separate center for the storage and review of classified Presidential records were not considered feasible, then the new NDC should consider establishing as part of its mechanism for the review of classified documents with multiple equities, an office or division dedicated to the reviews requested by Presidential libraries.
3. If neither of these options is considered feasible, Congress should consider amending the Presidential Records Act to provide, similar to the FRUS statute, that departments and agencies will give priority to the declassification of Presidential records over other declassification reviews, except those otherwise made pursuant to law, e.g. the FOIA or other searches mandated by statute.
4. In the absence of statutory change, a similar policy could be set forth in Executive order, or other Executive branch policy issuance.
5. If the current decentralized system is retained without structural change, NARA needs to consider means of augmenting the archival capabilities at Presidential libraries, e.g. by increasing their staffs, contracting out, granting security clearances to volunteers, to accelerate the archival processing of classified Presidential records.

DOE's View on Recommendations:

DOE concurs with recommendations 1 and 2 of Issue No. 3 as both would be viable options. DOE does not concur with recommendations 3 through 5. The NDC would provide a mechanism for the fast and efficient review of Presidential records with multiple agency equities housed in a separate location as suggested in recommendation 1 or in the NDC itself as suggested in recommendation 2. If neither of these options is feasible, requiring agencies to give priority to Presidential documents either through statute (recommendation 3) or Executive Order (recommendation 4) without establishing the mechanism for interagency coordination would not be any more successful than the Remote Archives Capture (RAC) program established by the Central Intelligence Agency (CIA). More importantly, there would be no guarantee that members of the public would get those documents that are of most interest to them. DOE has concerns with recommendation 5 (increase staff or utilize volunteers who would be appropriately cleared to accelerate the archival processing of classified Presidential records): such fixes should not come at the expense of qualified personnel.

Considerations for Implementation:

In implementing recommendation 1 or 2, consideration should be given to utilizing the group of experts identified in recommendation 2 of Issue No. 2 to prioritize the review of classified Presidential records. These experts could decide if certain Presidential records should be given higher priority than historically significant, 25-year-old documents.

Issue No. 4 – Preserving a Capability within Agencies to Review Records less than 25 Years of Age.

RECOMMENDATIONS

1. Either pursuant to uniform guidelines issued by the National Declassification Center or pursuant to an appropriate Executive branch issuance, agencies should be directed to dedicate some specific percentage of their declassification review personnel to conducting reviews of records less than 25 years old that they know to be historically significant and are reasonably likely to provide the public with meaningful results.
2. The Archivist should annually recognize in some appropriate fashion the agency or agencies that declassify and release to the public on their own initiative historically significant information less than 25 years old.

DOE's View on Recommendations:

DOE concurs with recommendations 1 and 2 under Issue No. 4. DOE recognizes that certain collections that are less than 25 years old may be of particular interest to the public and have a higher priority for review. However, any agency determination that records that are less than 25 years old are of significant interest to the public and given a high priority for review should be coordinated with the group of experts identified in recommendation 2 of Issue No. 2. Recognition of agency efforts to declassify records that are not 25 years old should only be done if the agency first meets the requirement to review those documents over 25 years old.

Considerations for Implementation:

Agencies that wish to review records that are less than 25 years old, but are considered by the agency to be historically significant and of particular interest to the public, should coordinate with the NDC to obtain its concurrence. This concurrence must include a dedication of resources from agencies that the requesting agency believes to have collateral classified information. The NDC could then incorporate those records in its priority list to ensure that coordinated reviews by other agencies would be accomplished in a timely manner. Agencies should not be required to dedicate a certain percentage of their declassification assets to review documents that are less than 25 years old. The amount of resources dedicated to such reviews should be dictated by the interest and value to the public. In implementing the second recommendation, an agency should only be recognized for declassifying documents that are less than 25 years old if it has met its declassification review requirement for historically significant documents and continues to provide assets to exceed the minimal requirements.

Issue No. 5 – Bringing Greater Uniformity, Consistency, and Efficiency to the Declassification Process.

RECOMMENDATIONS

1. The President, by executive order or other appropriate issuance, should charge the new NDC with prescribing uniform guidelines to govern the declassification activities of all executive departments and agencies.
2. In addition to prescribing uniform guidelines, the NDC should be responsible for providing “services of common concern” for the declassification activities of the Federal Government where appropriate, to include the review of classified documents that contain multiple equities, as well as the review of classified information contained in special media and electronic records.
3. The NDC should also be authorized to conduct declassification reviews for other departments and agencies on a reimbursable basis.
4. The Order should be amended to prescribe a uniform policy to govern the subsequent review of all exempted records.

DOE’s View on Recommendations:

DOE concurs in principle with recommendations 1 through 4 under Issue No. 5. Establishing uniform guidelines for training, technology, approach to declassification, and resource allocation as suggested in recommendation 1 would increase the efficiency in the declassification process. Such guidelines would benefit the public by ensuring that the declassification of records with multiple agency equities is not unnecessarily delayed because one agency does not adequately support the program. It would also enhance national security by preventing the inadvertent release of one agency’s equities because another agency failed to properly review its own collection of permanent, historical records. Implementing recommendation 2, making the NDC responsible for providing “services of common concern,” is critical to the success of the Government’s declassification effort. The NDC’s establishment of standardized procedures for the efficient coordination of reviews for documents with multiple agency equities would greatly enhance the timeliness and adequacy of the declassification process. Likewise, by being the focal point for technologies applied to declassification activities, NDC could ensure compatibility of the technologies used by various agencies and minimize the cost associated with developing such technologies independently. NDC could also enhance the efficiency of the declassification process in terms of timeliness, accuracy, and cost for declassification reviews by conducting the reviews for those agencies whose small collections do not justify a full-time program as suggested in recommendation 3.

While DOE agrees in principle with recommendation 4, we are concerned about the re-review, every 5 years, of classified documents that were exempt from declassification at their 25-year review. At the time the records were exempted, agencies established a new date or event for declassification. Re-reviews should be tied to those dates or events rather than an arbitrary time period to ensure that the efforts are focused on those records with the most likelihood of being declassified.

Considerations for Implementation:

Once set, the guidelines established to ensure that each agency provides adequate resources should be implemented gradually to allow affected agencies to allocate resources with their budget and hiring processes. Forcing agencies to respond too quickly could be counterproductive and result in the assignment of temporary or unqualified personnel and uneven funding for all facets of the program. The program established under recommendation 3 should be initiated and controlled by the agency owning the records. This prevents the inadvertent release of a set of records by an office that does not completely understand the nature of the set of holdings. This also makes the agency responsible for training the NDC to recognize the potential classified equities in the records.

Issue No. 6 – Expediting the Declassification Reviews of Multiple Equity Documents.

RECOMMENDATIONS

1. The centralized approach currently being taken pursuant to the National Declassification Initiative needs to be made permanent and institutionalized, preferably within the new National Declassification Center, and departments and agencies that have “equities” in such reviews should be required to provide adequate personnel to conduct them.
2. While the Board recognizes that as a practical matter, the “automatic declassification” deadline for multiple equity documents may have to be extended by the President, it recommends that the deadline be extended no more than once and only after the Archivist has presented him with a comprehensive and realistic plan, agreed to by the departments and agencies involved, for achieving the objective within the time frame contemplated.

DOE's View on Recommendations:

DOE concurs with recommendation 1 for Issue No. 6 and in principle with recommendation 2. In order to be effective, the NDC must be a permanent and institutionalized body with adequate resource allocations from each agency. Without this body, the timeliness and adequacy of the declassification reviews of records with multiple agency equities will not be possible, resulting in both delayed releases to the public and greater incidents of national security concerns. With respect to recommendation 2, DOE also agrees that the deadline for reviewing multiple equity documents cannot be open ended; however, establishing a one-time extension is not realistic. Resource allocation for agencies cannot be easily adjusted to fluctuate with the variations associated with documents referred by other Government agencies. The Archivist should set goals based on known referrals and provided that an agency provides the level of effort to meet its goal, there should be a mechanism to easily adjust the deadline. Agencies have had multiple declassification deadlines since 1996, and in each case those deadlines have been adjusted without a drop in effort.

Considerations for Implementation:

As mentioned in the “Considerations for Implementation” in Issue No. 5 above, agencies should be able to meet the resource goals within the timelines dictated by their budget and hiring processes. Adjusting deadlines for completing multiple equity reviews should be allowed provided that adequate progress within the limits

of the allocated resources is being made. Deadlines should not be adjusted to reward inefficiencies or inadequate resources.

Issue No. 7 – Performing Declassification Review Involving Special Media and Electronic Records.

RECOMMENDATIONS

1. NARA should be formally charged with leading a special effort, within the new National Declassification Center, for analyzing the special media records problem and for creating a government wide plan for addressing it to include declassification and access.
2. As part of this process, the Center needs to consider at the outset how much classified information stored in special media is permanently valuable according to 44 U.S.C. and the PRA, and thus requires preservation.
3. The Center might consider whether the declassification review of special media records at age 25 or older ought to be limited to, or give priority to, the special media records containing historically significant information.
4. The Center should also consider what “services of common concern” it might be able to provide on a reimbursable basis to help agencies cope with the special media records problem, such as the procurement of obsolete hardware and software for the use of all participating agencies.
5. The Center should serve a similar role with respect to the review of classified electronic records, putting uniform policies in place to ensure activities of departments and agencies are synchronized and standardized with what NARA itself is planning in terms of the Electronic Records Archive, i.e., digitizing its archival records and making them available to the public electronically.

DOE's View on Recommendations:

DOE concurs with recommendations 1 through 5 under Issue No. 7.

Recommendations 1 through 5 represent a common sense approach to meeting the requirements for conducting reviews of special media records and classified electronic records. Neither the public nor the national security is served by reviewing or causing information contained in special media to be reviewed if the information is not of permanent historical value or available in other electronic or document form. Likewise, it would be extremely inefficient to require each agency to develop the capability to review special media records. NDC is the appropriate body to develop a policy for reviewing special media records and developing the technology to do so. NARA is the appropriate agency to develop future policies and technologies for synchronizing and standardizing the review for electronic records.

Considerations for Implementation:

The NDC and NARA should be funded for developing policies and technologies for the review of special media records and electronic records. The technologies should be made available to each agency at no cost.

Issue No. 8 – Re-reviews of Previously Disclosed Information.

RECOMMENDATIONS

1. Such action should be taken only when the potential harm to the national security from continued public disclosure is clear and convincing (after all, these records are most often far more than 25 years old), and the potential for future harm can be significantly ameliorated by withdrawing the records.
2. Any withdrawal of records that were previously available to the public at the National Archives

should require the approval of the Archivist; this concept should be codified in the Executive Order.

3. The Order or pertinent statutes should be amended to provide that no member of the public shall be criminally prosecuted, or suffer any other adverse consequences, for maintaining, using, or disseminating a record, or information contained in a document, that they had lawfully obtained from the National Archives or any other agency of the Federal Government.

4. These reviews should be undertaken only where there is a clear indication (and subsequent showing) that the benefits to our national security are worth the costs.

DOE's View on Recommendations:

DOE concurs in principle with recommendations 1 and 4 under Issue No. 8, but does not concur with recommendations 2 and 3. Documents containing classified information that were inappropriately released by another Government agency represent a potential compromise of and risk to the national security. DOE agrees that before removing such documents from the public shelves, the factors discussed on page 27 of the report to the President must be considered. However, it is not always possible to determine the extent of the damage and make an informed decision without first properly reviewing the collection. For example, the inadvertent release of Restricted Data related to the design of nuclear weapons could be an isolated mistake or it could represent a systemic error for an entire collection. The damage assessment and subsequent method for addressing the unauthorized release of such documents cannot be resolved until the entire collection is properly reviewed. While agencies should only take such action when it is absolutely necessary and the benefits to our national security are worth the cost, an agency may not be able to make an informed decision prior to a re-review.

With respect to recommendation 2, while the Archivist should concur with any decision of an agency to remove previously disclosed information from the public shelves, the ultimate determination should rest with the head of the agency responsible for the classified information or his or her designated representative.

With respect to recommendation 3, DOE agrees that prosecuting members of the public for maintaining, using, or disseminating a record or information contained in a record that they had lawfully obtained from any agency of the Federal Government should be rare. However, expressly prohibiting such action in an Order or statute is not advisable. The Government should retain the right to prevent the proliferation of the information that could be particularly damaging to the national security (e.g., nuclear weapon design information). Such decisions should be made by the agency that has jurisdiction over the classified information and the Justice Department on a case-by-case basis. The same factors for determining whether to re-review previously disclosed information from the public shelves at NARA should be considered.

Considerations for Implementation:

How an agency handles a potential compromise is dependent on many factors. Establishing hard and fast rules would be counterproductive. Instead, guidelines and factors to consider should be established to assist agencies in making the correct decision. However, the ultimate decision on the appropriate course of action and the expending of resources should rest with the agency responsible for the information.

Issue No. 9 – Dealing with other Exempted Information and the Delays Entailed in Archival Processing.

RECOMMENDATIONS

1. Records identified as being of historical significance should undergo a concurrent review for personal privacy or “controlled but unclassified” information at the same time as the review for declassification is conducted.
2. Standardization is required as to how Executive branch agencies handle “controlled unclassified information” at the end of its life-cycle.
3. The Archivist should develop a personnel plan, to be funded as part of NARA’s annual budget submission to the Administration (and later presentation to Congress), that would address the current archival processing backlog and to otherwise enable the National Archives in the future to fully process all declassified records within five years of their declassification so that they may be released to the public.

DOE’s View on Recommendations:

DOE concurs with recommendations 1 through 3 under Issue No. 9. DOE supports the concept of linking the review for Controlled Unclassified Information (CUI) to the declassification review process since this would be the most efficient use of limited review resources.

Considerations for Implementation:

In implementing recommendations 1 and 2, consideration should be given to CUI that is governed by statute or Federal regulations. In addition, certain expertise may be required to conduct the reviews for certain types of CUI, e.g., Unclassified Controlled Nuclear Information or Export Controlled Information.

Issue No. 10 – Exercising Discretion for Disclosure in Exceptional Cases.

RECOMMENDATIONS

1. The Order should be amended to provide that where the entity that originally requested declassification review of the record in question is a Government entity (including a Presidential library, the office that prepares the Foreign Relations of the United States (FRUS) series, a congressional committee, or a court) who is seeking disclosure of the record for a public purpose, *and that entity* objects to the continued classification of the record on the grounds that the public interest outweighs the risk of damage caused by disclosure, it ought to trigger a referral to the senior agency official for a “weighing of the interests” under this provision of the Order.

DOE’s View on Recommendations:

DOE concurs in principle with this recommendation under Issue No. 10. However, DOE does not believe that an amendment to the Order is necessary. There are existing mechanisms in the Order and the Implementing Directive for agencies to declassify information whose public interest disclosure outweighs the risk for damage and for requesters to challenge the classification of specific information.

Considerations for Implementation:

The Implementing Directive already encourages individuals, including Government entities, to challenge the classification of specific information, especially if the public interest outweighs the risk of damage caused by disclosure of the information.

Issue No. 11 – Removing an Impediment to Comprehensive Review.

RECOMMENDATIONS

1. In the view of the Board, when an agency receives a request from an individual for a particular document or documents that are part of a larger collection of historically significant documents currently undergoing review for declassification, the agency receiving the request should be permitted to hold such request in abeyance for up to one year, provided it advises the individual requestor that the document or documents at issue are part of a larger collection undergoing declassification review and advises the requestor when the results of the larger declassification review are expected to be made available.

DOE's View on Recommendations:

DOE concurs in principle with this recommendation under Issue No. 11. DOE supports the concept of ensuring that the Government's limited declassification assets are focused on those documents that are of most value to the public.

Considerations for Implementation:

DOE questions whether the FOIA or the MDR provisions in the Order allow for such a lengthy delay in responding to the requester.

Issue No. 12 – Expanding the Uses and Roles of Historians and Historical Advisory Boards.

RECOMMENDATIONS

1. Amend the Order to require that all departments and agencies with significant classification activity establish historical advisory boards —composed of experts from inside and outside the agency—who report to the head of the agency.
2. By appropriate Executive branch issuance, require all departments and agencies with responsibilities in the national security area to hire an appropriate number of historians, either to select classified records of historical significance for declassification review and publication (as part of the department or agency's ongoing declassification initiatives), or to write historical accounts based upon the department or agency's classified holdings.
3. The declassification review of historical accounts written by agency historians ought to take place 25 years after the most recent event considered in the account, rather than 25 years after the historical account is written.

DOE's View on Recommendations:

DOE concurs in principle with recommendations 1 and 2 for Issue No. 12, but not with recommendation 3. Establishing an advisory board to assist in setting priorities for declassification activities as described in recommendation 1 would ensure that an agency's declassification assets are focused on those records that are of most interest to the public. However, such a board should not be limited to historical considerations. Environmental and health issues may be of more interest and greater benefit to the public. This is particularly true of DOE collections that include many classified records that are not historically significant, but are of great interest to local governments and health organizations concerned with off-site contamination. While DOE agrees in principle with recommendation 2, it does not believe that an executive branch issuance would be the most effective way to achieve the goal as stated. Each department or agency is in the best position to decide how to

implement this recommendation; e.g., how to determine an “appropriate number of historians” or how to select classified records of historical significance.

The roles and responsibilities of the National Archives would better suit that agency to augment its staff to perform the functions under recommendation 3. This would allow NARA to serve as a central repository and point of contact for information regarding both classified and declassified agency and department histories. For DOE, reviewing historical studies 25 years after the last event covered as discussed in recommendation 3 would be problematic. First, record systems are not designed to identify documents based on the date of content, so it would be a burden on the agencies to locate appropriate documents in any given year. Second, a document generated on an event that took place over 25 years ago (e.g., the Cuban Missile Crisis) would need an immediate declassification review. Plus, there is no guarantee that the classification status was not based on more current events that were not the focus of the document. The prioritization of such histories should be established in the same manner as other documents. Those that are of particular interest to the public will have a higher priority.

Considerations for Implementation:

DOE supports the concept of ensuring that the Government’s limited declassification assets are focused on those documents that are of most value to the public. However, DOE believes that an advisory board should not only focus on the historical aspects, but also on other issues of public concern, to include those that have occurred fairly recently. DOE considers recommendation 1 as instrumental in setting such declassification priorities.

Issue No. 13 – Clarifying the Status and Treatment of Formerly Restricted Data (FRD).

RECOMMENDATIONS

1. Preferably, the President should make clear by an amendment to the Order that FRD should be treated as “defense information” and should be safeguarded and declassified in accordance with the Order, thereby providing the public with the same rights of access that it has to other information classified pursuant to the Order.
2. If, on the other hand, the President believes that the information currently designated as FRD, because of its particular sensitivity, should continue to remain outside the classification system, consideration should be given to transitioning FRD to the normal classification system as it reaches 25 years of age (and presumably has become less sensitive).
3. If the President determines that the current system should remain as it is, the Board recommends that an appropriately cleared representative of the public, familiar with the issues, should participate in the Government’s periodic deliberations with respect to what should remain in FRD, i.e. excluded from the normal classification and/or release to the public. In addition, DOD, DOE, and State should promulgate clear and consistent guidance to the larger declassification community with respect to what constitutes FRD, e.g. former storage locations of nuclear weapons, which may be identified in permanent historical records more than 25 years old.

DOE's View on Recommendations:

This issue discusses the status and treatment of FRD. While it describes the statutory basis of Restricted Data (RD) and FRD and captures the public's argument for the release of FRD, it does not accurately represent DOE's efforts to review FRD for release to the public under the FOIA and the MDR provisions of Order. The initial claim that FRD remains outside the scope of information that can be requested by the public is incorrect. Requests for documents containing FRD are handled essentially like requests for documents containing any other category of classified or unclassified controlled information.

DOE disagrees with recommendations 1 and 2 that suggest that FRD should be treated as "defense information" and should, therefore, be safeguarded and declassified in accordance with the Order. The Atomic Energy Act of 1954, as amended, (the Act) describes a declassification process for FRD that is different from that in the Order. Due to the sensitivity of the information, the Act places stricter controls on FRD. For example, the Act prohibits the transfer of FRD information to foreign nations without a formal agreement specified under section 123 of the Act. This prohibition reflects the intent of Congress to place a higher level of control on FRD than on other forms of defense information. In addition, the recommendations do not recognize that the Act requires that FRD be handled as RD in foreign dissemination. This means that any alteration to the treatment of FRD will require an alteration to the treatment of RD. DOE opposes any such alteration.

Regarding recommendation 3, DOE has provided training to nearly 3,300 declassification reviewers from many other Federal agencies to help them better understand, among other things, what information is FRD. DOE classification training staff is available to develop and provide briefings tailored to the needs of other agencies upon request. Supplementing this training, DOE has developed and issued several brochures as well as computer-based training materials to assist other-agency staff to better recognize DOE equities, including examples of what kinds of information are FRD. DOE also maintains a classification/declassification Outreach Hotline that anyone may call with questions about FRD or any other classification/declassification-related issues.

The sensitivity of certain FRD information, however, pertains to foreign relations and military activities, and both the Department of Defense and the Department of State have at various times expressed concerns about declassifying this information. In an effort to make progress on this issue, DOE would support the appointment of a cleared representative of the public to participate in periodic reviews of this information for potential declassification.

Considerations for Implementation:

The report describes FRD as principally covering the numbers and locations of nuclear weapons. While DOE agrees that these two types of FRD are of chief interest to historical researchers, these types represent a minority of the FRD information described in DOE classification guidance. The bulk of FRD

information concerns the militarization of nuclear weapons (e.g., weight, size, safing, arming, firing, fuzing, weapon effects) that could reveal nuclear weapon design information. DOE believes that changing the category to NSI may leave certain nuclear weapon design information with looser control requirements than was originally intended by the Act.

With this caution in mind, DOE recognizes that information concerning numbers of nuclear weapons and former storage locations often is sought by historical researchers, and we are committed to addressing this issue.

Issue No. 14 – The Handling of the President’s Daily Brief.

RECOMMENDATIONS

1. The President should clarify as a matter of policy that he will not foreclose declassification review of the PDB by claiming “executive privilege” for it. He or she may reserve the right as a former President to assert executive privilege with respect to particular documents that are being considered for release by his or her Presidential library.
2. The President should direct that the PDB be retained by the White House as a Presidential record under the Presidential Records Act. It can then later be reviewed for declassification at the request of the Presidential library concerned.
3. The President should direct that the PDBs that were not allowed to remain in the Presidential materials of past Presidents be provided to each Presidential library. Before they are sent to the Presidential library, they should undergo a declassification review. The Presidential library should maintain the PDBs as a distinct series.

DOE’s View on Recommendations:

DOE concurs with recommendations 1 through 3 under Issue No. 14.

Considerations for Implementation:

While DOE agrees that such records are of interest to the public, we would request that any records that may contain RD or FRD be sent to DOE for declassification review.

Issue No. 15 – Declassification Reviews of Certain Congressional Records.

RECOMMENDATIONS

1. Formal procedures should be established for the declassification review of classified committee reports and hearing transcripts created by committees within their respective bodies.
2. If a new National Declassification Center is established it should have responsibility for review of congressional records.

DOE’s View on Recommendations:

DOE concurs with both recommendations under Issue No. 15.

Considerations for Implementation:

While DOE agrees that such records are of interest to the public, we would request that any formal procedures include a provision requiring records that may contain RD or FRD be sent to DOE for declassification review.